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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

JEFFREY EUGENE BELL,

Defendant and Appellant.

C059337

(Super. Ct. No. 065140)

Following the denial of his suppression motion (Pen. Code, § 1538.5), defendant Jeffrey Eugene Bell pled no contest to receiving stolen property (Pen. Code, § 496, subd. (a)) and possession of heroin (Health & Saf. Code, § 11350, subd. (a)). The court sentenced him to seven years and four months in prison.

On appeal, defendant contends the court erred in denying his suppression motion. We shall affirm.

BACKGROUND

In August 2006, Aaron Simmons was working as a security supervisor at Cache Creek Casino when he was alerted to suspicious activity in the parking lot. Simmons went to the dispatch room and via a surveillance camera, saw a woman sitting on the edge of the open trunk of a maroon Oldsmobile while holding a syringe in the parking lot. He then had a subordinate inform Yolo County dispatch.

Simmons next saw a man approach the car and enter through the driver's side door. The man left the car and walked back to the woman, who handed him something before he reentered the car. Simmons saw the man wrap a cord around his arm, and at some point, hold a syringe. The security office contacted Yolo County dispatch and relayed the updated information.

The car then moved to a different lot and parked. Keeping a camera on the parked car, Simmons saw the woman put her feet on the dashboard and the man hold up a syringe. After learning the Yolo County Sheriff's Department was responding to the call, Simmons went to the car.

Yolo County Sheriff's Deputy Lori Olson was dispatched to Cache Creek Casino to investigate suspicious activity involving possible illicit drugs. Cache Creek security told her the location of the car, and identified it as a burgundy 1997 Oldsmobile Cutlass and that they had witnessed a man in the process of injecting something into his left arm, which had a

tie around it. Deputy Olson had previously responded to calls at Cache Creek many times, and found their security office to be "[e]xtremely reliable."

Deputy Olson arrived in her marked patrol car and saw two people in the Oldsmobile, defendant and codefendant Maria Nelson.¹ Deputy Olson approached defendant, the driver, and told him she was there to investigate a report from casino security that they had been seen using possibly illegal drugs.

Defendant told Deputy Olson she did not have probable cause because he was not doing any drugs. During the ensuing discussion, Deputy Olson repeatedly asked defendant to leave the car. He finally complied, and Deputy Olson put her hand on his arm as she escorted him to the patrol car. Deputy Olson told defendant he was being detained, but not arrested, as she put him in the back of the patrol car.

While Deputy Olson was with defendant, Simmons arrived and ordered Nelson out of the car. Deputy Olson then told Nelson why she was there and that she had probable cause to believe they were using illicit drugs. Nelson replied that defendant was going to shoot up when he was in the driver's seat.

¹ Codefendant Nelson is not a party to this appeal.

Deputy Olson testified that Simmons² told her he had seen defendant and Nelson exchanging drugs. Olson testified: "He [Simmons] told me that he had witnessed Mr. Bell and Ms. Nelson exchanging drugs, whether or not they were throwing them on the inside of the vehicle. I believe it was Mr. Bell who passed Ms. Nelson something." The deputy then searched the car and found black tar heroin, a syringe in the front console, and a billy club in the trunk. Searches of defendant and Nelson revealed several stolen credit cards.

The court denied the suppression motion, finding Nelson's statement and the information given by Simmons to Deputy Olson established probable cause.

DISCUSSION

Defendant contends the search violated the Fourth Amendment because it was made without probable cause. We disagree.

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under

² Simmons never testified that he saw drugs being exchanged. He testified that he told Olson what he had witnessed in the dispatch room; that he saw a syringe, and believed it was still in the car.

the Fourth Amendment, we exercise our independent judgment.

[Citations.]” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

“If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more.”

(*Pennsylvania v. Labron* (1996) 518 U.S. 938, 940 [135 L.Ed.2d 1031, 1036] (*per curiam*); see *California v. Carney* (1985) 471 U.S. 386, 390-391 [85 L.Ed.2d 406, 412-413].) Whether there is probable cause to search a car is governed by the same standard as any other probable cause determination: could a neutral and detached magistrate make a practical, commonsense decision that, given the totality of the circumstances, “including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of crime will be found in a particular place.”

(*Illinois v. Gates* (1983) 462 U.S. 213, 238 [76 L.Ed.2d 527, 548].)

Defendant asserts Deputy Olson did not initially have probable cause to search the car because there are innocent explanations for using a syringe, such as a diabetic injecting insulin. He also argues the court could not rely on Nelson’s statement since it was the product of an illegal search, specifically when Deputy Olson told Nelson she had probable cause.

Even if there are innocent explanations for tying one's arm and using a syringe in a car in a casino parking lot, it is unnecessary to determine whether possessing a syringe in these circumstances by itself supports probable cause. Contrary to defendant's claim, the court could consider Nelson's statement because it was not the product of a search.

"It is commonly accepted that a 'search' is a governmental intrusion upon, or invasion of, a citizen's personal security in an area in which he has a reasonable expectation of privacy. [Citations.]" (*People v. Mayberry* (1982) 31 Cal.3d 335, 341.) The term "search" "'implies some exploratory investigation or an invasion and a quest, a looking for or seeking out. . . . A search implies a prying into hidden places for that which is concealed and that the object searched for has been hidden or intentionally put out of the way.'" [Citation.]" (*Bielicki v. Superior Court* (1962) 57 Cal.2d 602, 605.)

There was no search until Deputy Olson actually entered the car and looked for contraband. Olson's statement to Nelson that she had probable cause, whether or not it was a correct legal opinion, was not a governmental intrusion or an invasion of Nelson's personal security; it did not look into a hidden place for concealed information or contraband. Since Nelson's statement occurred before the search, it was evidence of probable cause rather than the product of an illegal search. Thus, we need not determine whether her statement was "'the

product of [her] free will and not a mere submission to an express or implied assertion of authority. [Citation.]' [Citation.]" (*People v. Zamudio* (2008) 43 Cal.4th 327, 341.)

Nelson's statement that defendant was going to shoot up when he was in the driver's seat, when combined with the observation from a reliable source that a man in that car was poised with a syringe and a tied arm, provided Deputy Olson with probable cause that the car contained illegal drugs and drug paraphernalia. We agree with the trial court that the search was supported by probable cause.

DISPOSITION

The judgment is affirmed.

CANTIL-SAKAUYE, J.

I concur:

NICHOLSON, J.

I concur in the result:

BLEASE, Acting P. J.